Sec. 33-59. Board of investment trustees.

(a) *Established.*

(1) The Board of Investment Trustees is established to manage the trust under this Article.

(2) The Board continues until abolished by law.

(b) *Membership.*

(1) The Board has 13 trustees.

(2) The County Executive must appoint 4 voting, *ex officio* members of the Board, subject to County Council confirmation as members, who serve indefinitely while each holds the respective office. These *ex officio* trustees should be:

(A) the Director of Management and Budget;

(B) the Director of Finance;

(C) the Director of Human Resources; and

(D) the Staff Director of the County Council.

(3) The following 9 trustees must be appointed by the Executive and confirmed by the Council:

(A) Three active County employees, each of whom is a member of a different collective bargaining unit, and who are vested members of the retirement system, or individuals recommended by each employee organization certified under Articles V, VII, or X. Each employee organization may recommend 3 to 5 individuals for the respective trustee position. Before appointing these trustees, the Executive must consider, and should select from, the individuals recommended by the employee organizations. The Executive must not appoint more than one person from each employee organization. The Executive must notify the Council when appointing an individual not recommended by an employee organization. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council. Any trustee appointed under this subparagraph must not vote on any matter involving the County deferred compensation plan.

(B) An active County employee who is a vested member of the retirement system and the Merit System, and not a member of a collective bargaining unit. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.

(C) A retired County employee who is a member of the retirement system. Before appointing this trustee, the Executive must consider, and should select from, a list of 3 to 5 individuals recommended by the Montgomery County Retired Employees' Association. The Executive must notify the Council when nominating an individual not recommended by the Association. A 3-year term for this trustee ends on March 1 of every third year after the trustee is confirmed by the Council.

(D) Two persons recommended by the Council who are knowledgeable in pensions, investments, or financial matters. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.

(E) Two individuals knowledgeable in pensions, investments, or financial matters. Before nominating these trustees, the Executive must consider, and should select from, individuals recommended by citizens or countywide citizens' groups. An individual recommended by a citizens' group need not be a member of the group. The Executive must notify the Council when nominating an individual not recommended by a citizens' group. A 3-year term for these trustees ends on March 1 of every third year after each trustee is confirmed by the Council.

(4) A trustee appointed under paragraph (3) continues to serve after the trustee's term ends until the Council confirms a successor, but the term for each position is not affected by any holdover. A trustee who, after appointment and before the end of a term, is no longer qualified for the trustee's position is removed from the Board by operation of law.

(5) The Executive must not appoint as a trustee any person who furnishes, or is employed by a firm that furnishes, to pension funds and other institutional investors the kind of investment services purchased by the Board.

(c) *Vacancies.*

(1) A trustee who is absent from more than 25 percent of the scheduled meetings of the Board during any 12-month period has resigned from the Board. Scheduled meetings mean meetings held at least 7 days after notice of the meeting.

(2) A vacancy on the Board must be filled for the unexpired term in the same manner as the previous trustee was appointed.

(d) *Compensation.* The trustees must serve without compensation from any source for service rendered to the Board, except that an active employee trustee may receive administrative leave to serve on the Board. The Board must reimburse trustees for any expense approved by the Board. A trustee must not receive reimbursement for expenses from any other source.

(e) *Acceptance of trust.* Within 10 days after the Council confirms a trustee, the trustee must certify in writing to the Chief Administrative Officer that the trustee accepts the trust and will administer the affairs of the trust with care, skill, prudence, and diligence.

(f) *Written policies.*

(1) The Board must establish written policies to administer and invest the funds created by this Article and to transact the business of the trust and the retirement system.

(2) The Board must apply the policies to all members and beneficiaries of the retirement system and must not discriminate in favor of or against any member or beneficiary of the retirement system.

(g) *Officers.* The Board must select a chair, vice chair, and secretary from the Board's members.

(1) The chair must preside at meetings of the Board and may take administrative action, including executing an instrument, on behalf of the Board. A person may rely in good faith on an act of the chair as legally valid.

(2) The vice chair must perform the duties and exercise the powers of the chair when the chair is absent from the County or disabled, or the Board determines is otherwise unable to perform the duties of the chair.

(3) The secretary must record the proceedings and actions of the Board and may certify a document or action of the Board. A person may rely in good faith on the secretary's certification as proof of the document or action.

(h) *Meetings and actions.*

(1) The Board must meet at least once during each calendar quarter. The chair, or 7 members of the Board, may call a meeting of the Board, in the manner and at times and places provided under the policies of the Board. The Board is a public body under the State Open Meetings Act.

(2) A. Seven trustees constitute a quorum.

B. Each trustee has one vote.

C. Seven trustees must agree for the Board to act.

(3) The Board may act without a meeting. All of the trustees must concur in writing for the Board to approve any action the Board takes without a meeting.

(4) The Board may adopt procedures consistent with this Section.

(5) The Board may authorize a trustee to execute instruments on behalf of the Board. The authority must be in writing and specifically describe the instrument and how the trustee must execute the instrument.

(i) *Records.*

(1) The Board must keep investment accounts and records necessary to calculate the value of each retirement system fund and evaluate the experience and performance of the retirement system.

(2) The Board may designate a person to maintain the records.

(3) Accounts and records are subject to State law on public records.

(j) *Removal of trustee.* With the Council's approval, the County Executive may remove a trustee for violating this Article or other good cause.

(k) *Legal adviser.* The County Attorney is the legal adviser to the Board.

(l) In this Section, "retirement system" means the Employees' Retirement System or the Retirement Savings Plan. (1987 L.M.C., ch. 29, § 11; 1987 L.M.C., ch. 40, § 2; 1994 L.M.C., ch. 16, § 1; 1998 L.M.C., ch. 27, § 1; 2004 L.M.C., ch. 30, § 1; 2005 L.M.C., ch 24, § 1.)

Editor's note—1998 L.M.C., ch. 27, § 2, reads as follows: "Sec. 2. Transition. A trustee serving on the Board of Investment Trustees when this Act becomes law [December 2, 1998] continues to serve in the equivalent trustee position. The term of an incumbent trustee whose term would have ended before the applicable date specified in Code Section 33-59(b)(3) as amended by this Act, is extended to the specified date."

Sec. 33-60. The board of investment trusteesCPowers and duties.

(a) *General.*

(1) Except as provided in section 33-47, subsection (a)(2) of this section, and other sections of this chapter, the powers and duties with respect to the administration and the investments of the retirement system are hereby vested in the board of investment trustees. However, the powers and duties of the board must not become effective until all of the trustees have accepted the trust in writing.

(2) a. The board must invest and reinvest, or cause to be invested or reinvested, the principal and income of the retirement system and keep the same invested without distinction between principal and income. The board has the exclusive authority to manage the assets of the retirement system. The board may make or permit an investment manager to make individual investment selections with respect to investments described in subsections (c)(1)d., e., f., and g. of this section and with respect to personal property described in subsection (c)(1)h. The board must select investment managers to make individual investment selections with respect to investments described in subsection (c)(1)a., b., and c. of this section and with respect to real property described in subsection (c)(1)h. However, any investment of the retirement system in existence on the day before all members have accepted the trust may remain as an investment until the earlier of:

(i) Its maturity date, if any;

(ii) The date it is liquidated under the investment policy of the board; or

(iii) The date it is liquidated under subsection (c)(6).

The board must hold the annuities purchased under the Amendment, Settlement and Transfer agreement under Group Annuity Contract #1920 until Aetna Life Insurance Company has completed its performance under that agreement.

b. The board must appoint at least two (2) investment managers as soon as possible after all of the members of the board have accepted the trust. Within one (1) year of the date all of the trustees have accepted the trust in writing, the board must have appointed at least three (3) investment managers. The investment manager which has contracts for the investment of the retirement system's assets as of the date the council adopts this article may be one of these investment managers.

c. At any time the board is selecting a new investment manager, the board may have fewer than three (3) investment managers.

(3) Chapter 11B does not apply to procurement of goods and services for the retirement system by the board.

(b) *Agents for transfer of property.*

(1) The board may register any securities or other property in its own name or in the name of a nominee. The board may hold any security in bearer form. However, the board or its agent must keep records that show that the investments are part of the trust fund.

(2) The board may form a partnership under the laws of Maryland for the purpose of holding or transferring securities as the nominee of the board.

(3) The board may designate in writing a trustee to hold or transfer securities as nominee of the board.

(4) The board must provide that trustees or a partnership that the board designates must act only as agents of the board. The board may set other conditions that the board considers prudent.

(5) The trustees of a partnership the board designates may agree with a bank or other financial institution to:

a. Guarantee the signatures made as nominee of the board; and

b. Conduct settlements and transfers through participation in central security depositories.

(6) Except as authorized by executive regulation adopted under method (3) that is substantially equivalent to federal ERISA regulations on maintenance of indicia of ownership of plan assets, the board must maintain the indicia of ownership of

the assets of the retirement system within the jurisdiction of the district courts of the United States.

(c) *Authorized investments.*

(1) Subject to subsection (a)(2) of this section, the board may invest or permit an investment manager to invest the assets of the retirement system fund in any investment it considers prudent within the policies set by the board, including but not limited to:

a. Bonds, debentures, notes, savings accounts, certificates of deposit, variable note arrangements, obligations of the United States Government, commercial paper, money market certificates, bankers' acceptances or other evidence of indebtedness;

b. Mortgages, certificates of mortgage pools and guaranteed mortgage pass-through certificates or other similar investments in mortgages;

c. Stocks (regardless of class), or other evidence of ownership, in any corporation, mutual fund, investment company, association, or business trust;

d. Combined, common or commingled trust funds;

e. Retirement or annuity contracts;

f. Guaranteed investment contracts;

g. Group annuity contracts; and

h. Real and personal property of all kinds, including leaseholds on improved or unimproved real estate, oil, mineral or gas properties, or royalty interests or rights. However, any investment in real property is limited to a pooled investment arrangement in which the board has no power or right to manage the real estate property, provided that the pooled arrangement does not invest more than 10% of its assets in real property located in Montgomery County.

(2) If an investment through any combined, common or commingled trust fund exists, the declaration of trust of that fund is a part of the retirement system trust under this article.

(3) The board and an investment manager must not invest the retirement system assets in any bonds, notes or debt instruments issued by:

a. The county;

b. Any political subdivision within the county;

c. Any agency supported or financed wholly or partly by taxes levied by the county council; or

d. Any agency supported by bond issues underwritten by the county.

(d) *Trustee powers.* Subject to the limitations under subsection (a)(2) of this section, the board has the power to:

(1) With any cash, purchase or subscribe for any investment, at a premium or discount, and retain the investment.

(2) Sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose, at public or private sale, for cash or credit or both, any part of the retirement system.

(3) Except as provided in section 33-61A(h)(2), sue, defend, compromise, arbitrate, compound and settle any debt, obligation, claim, suit, or legal proceeding involving the retirement system, and reduce the rate of interest on, extent or otherwise modify, foreclose upon default or otherwise enforce any debt, obligation, or claim.

(4) Retain uninvested that part of the retirement system fund described in subsection (f) without being liable for the payment of interest.

(5) Exercise any option on any investment for conversion into another investment, exercise any rights to subscribe for additional investments, and make all necessary payments.

(6) Join in, consent to, dissent from, oppose, or deposit in connection with the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporation or property in which the assets of the retirement system are invested, or the sale, mortgage, pledge or lease of that property or the property of any such corporation upon such terms and conditions that the board considers prudent; exercise any options, make any agreements or subscriptions, pay any expenses, assessments, or subscriptions, and take any other action in connection with these transactions that the board considers prudent; and accept and hold any investment that may be issued in or as a result of any such proceeding.

(7) Vote, in person or by any proxy, at any election of any corporation in whose stock the assets of the retirement system are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the retirement system; and give general or specific proxies or powers of attorney with or without power of substitution.

(8) Sell, either at public or private sale, option to sell, mortgage, lease for a term of years less than or continuing beyond the possible date of the termination of the

trust, partition or exchange any real property for such prices and upon such terms as the board considers prudent, and execute and deliver deeds of conveyance and all assignments, transfers, and other legal instruments for passing the ownership to the purchaser, free and discharged of all liens.

(9) Renew or extend any mortgage, upon such terms that the board considers prudent, and increase or reduce the rate of interest on any mortgage or modify the terms of any mortgage or of any guarantee as the board considers prudent to protect the retirement system or preserve the value of the investment; waive any default or enforce any default in a manner that the board considers prudent; exercise and enforce any right of foreclosure, bid on property in foreclosure, take a deed in lieu of foreclosure with or without paying a consideration, and release the obligation on the bond secured by the mortgage; and exercise and enforce in any action, suit or proceeding at law or in equity any rights or remedies in respect to any mortgage or guarantee.

(10) Form a corporation or corporations under the laws of any jurisdiction or acquire an interest in or otherwise make use of any corporation already formed to invest in and hold title to any property.

(11) For the purpose of investing in and holding title to real or personal property or part interests therein, as described in subsection (c)(1)h., including equipment pertaining thereto, leaseholds, and mortgages, to take any action it considers prudent.

(12) Incur and pay expenses for agents, financial advisors, actuaries, accountants and counsel, if those expenses are incurred solely to perform the board's duties under this article.

(13) Borrow, raise or lend moneys, for the purposes of the retirement system, in such amounts and upon such terms and conditions as the board in its discretion considers prudent; for any money borrowed, issue a promissory note and secure the repayment of this note by pledging or mortgaging all or any part of the retirement system.

(14) Hold, buy, transfer, surrender, and exercise all other incidents of ownership of any annuity contract.

(15) If payments to a member or beneficiary are to be made in the form of an annuity based upon one (1) or more lives or life expectancies, buy from any legal reserve life insurance company a single premium, nontransferable annuity contract providing for the payment of the benefits.

(16) Do all acts which it considers necessary and exercise any and all powers of this article with respect to the management of the retirement system, and in general, exercise all powers in the management of the assets which an individual could exercise in the management of property owned in the individual's own right except for making an individual investment selection.

(e) *Prohibited transactions.* The board must not engage in any transaction between the trust and the county or any entity controlled by the county in which the board:

(1) Lends any part of its income or corpus, without receiving adequate security and a reasonable rate of interest;

(2) Pays any compensation, more than a reasonable allowance for salaries or other compensation or personal services actually rendered;

(3) Makes any part of its services available on a preferential basis;

(4) Makes any substantial purchase of securities or other property, for more than adequate consideration;

(5) Sells any substantial part of its securities or other property, for less than adequate consideration; or

(6) Engages in any transaction which results in a substantial diversion of its income or corpus.

(f) *Available cash.* The board may keep cash available in an amount it considers prudent to pay benefits, expenses and other payments. The board may keep cash on deposit in one (1) or more banks or trust companies organized under the laws of any state, or of the United States, but the sum on deposit in any one (1) bank or trust company must not exceed twenty-five (25) percent of the paid-in capital and surplus of that bank or trust company.

(g) *Investment management agreements.*

(1) *Appointment of investment manager.* Except as permitted under subsection (a)(2), the board must appoint investment managers to manage, acquire, or dispose of all or some of the assets of the retirement system. The board may dismiss any manager the board appoints. The fees charged by any manager are expenses of the retirement system.

(2) *Investment contract.* Any contract must provide that when the investment manager is making individual investment selections, the investment manager must make the individual investment selections subject to the written policies of the board. In any contract, the board must identify the assets that are the subject to the contract. In any contract, the board may give an investment manager the right to invest the assets of the retirement system specified in the contract without prior notice to or approval by the board. In any contract, the board may limit the investment of a specified portion of the retirement system to a certain type of property, such as but not limited to common stocks, bonds, or real estate. If a contract only applies to a portion of the assets of the retirement system and specifies the type of property to be invested in, the manager must achieve diversification within the specified category of property, but is not responsible for diversification of investments of the entire retirement system. In any contract, the board may delegate to the investment manager any of the powers or

discretion conferred on the board under this article and may provide that the investment manager must have custody and control of certain assets of the retirement system.

(3) *Monitoring of investment manager.* The board must monitor the performance of the managers and may terminate any appointment. Monitoring may include any tests or analyses that the board considers prudent in the circumstances to ensure the stability and growth of the retirement system.

(h) (1) Except as provided in subsection (d)(12), the board must pay all benefits and expenses of the retirement system as directed by the chief administrative officer.

(2) If the board approves a contract for delegation of the custodial functions as provided in section 33-61, the board must coordinate the payment of benefits and must monitor the timeliness and accuracy of such benefit payments.

(3) The board is entitled to rely on the decision of the chief administrative officer as to the proper recipient of benefit payments. (1987 L.M.C., ch. 29, ' 11; CY 1991 L.M.C., ch. 17, ' 1; 1992 L.M.C., ch. 11, ' 1; 1993 L.M.C., ch. 45, ' 1; 1998 L.M.C., ch. 27, ' 1.)

Sec. 33-61. Custodian.

(a) The director of finance is the custodian of the retirement system assets. The director must give bond with such surety and for such periods and in such amount as the board determines. All payments from the retirement system assets must be made by (i) the director of finance, (ii) a designee of the director of finance, or (iii) two (2) persons designated by the board, acting jointly. The board must file a duly attested copy of the resolution of the board designating the two (2) persons, with specimen signatures of those persons, with the director of finance to indicate their authority for making payments.

(b) If the board approves, the director of finance may make written contracts with banks, trust companies, insurance companies or investment companies authorized to do business in any state for the safe custody of investments, banking services, the payment of benefits and expenses and any other function necessary for the management and safeguarding of the assets of the retirement system. The contract may provide that a bank, trust company, insurance company, or investment company may invest assets of the retirement system in:

(1) Money market funds;

(2) A short-term investment fund of a bank, trust company, or insurance company; or

(3) Their substantial equivalent. As soon as possible after all members of the board have accepted the trust, the board must approve a written contract for the investment purposes described in this subsection.

(c) If the board approves, the director of finance may direct the payment of benefits and expenses from a trust account of the board.

(d) Chapter 11B does not apply to the procurement of goods and services for the retirement system by the director of finance. (1987 L.M.C., ch. 29, ' 11.)

Sec. 33-61A. Indemnification of trustees.

(a) *Authorized.* The county must indemnify every member of the board who is or may become a party to any action, suit, or proceeding, including administrative and investigative proceedings, by reasons of service as a member of the board, subject to the conditions stated in this section.

(b) *Standards for indemnification.*

(1) The county must indemnify a member of the board:

a. With respect to civil matters, if the member acted in good faith and in a manner that the member reasonably believed to be in the best interest of the retirement system; and

b. With respect to criminal matters, if the member had no reasonable cause to believe that the member's conduct was unlawful.

(2) If the county must indemnify a member of the board under this article, the county must indemnify the member for expenses when the member incurs the expense, including but not limited to:

a. Reasonably attorney fees;

b. Judgments;

c. Damages;

d. Fines; and

e. Settlements.

(c) *Effect of termination of any suit or proceeding.* The termination of any suit or proceeding does not, by itself, create a presumption that a trustee did not act in good faith and in a manner reasonably believed to be in the best interest of the retirement system. The termination of a criminal action or proceeding does not, by itself, create a presumption that a trustee had reasonable cause to believe that the conduct was unlawful.

(d) *Exceptions to indemnification.* The county must not indemnify any member of the board if:

(1) The member of the board is found by a court or other tribunal to be liable for gross negligence or willful and wanton misconduct in the performance of a duty

to the retirement system; or

(2) Liability arises from action that occurred before the date on which all the trustees have accepted the trust in writing.

(e) *Recovery of payments.* If the county attorney determines that indemnification payments have been made that are outside the scope of indemnification, the county attorney must take appropriate action, on behalf of the county, to recover the payments.

(f) *Insurance provided.* The county must provide insurance for each member of the board against any liability asserted against or incurred by the member of the board with respect to service on the board. Premiums for any insurance must not be paid with assets of the retirement system. The county may self-insure for this purpose, wholly or partly. If the county does not provide adequate insurance coverage or indemnification under this section, a member of the board need not pay any amount attributable to liability incurred by serving on the board, and the county must pay any amount due.

(g) *Defenses.* The county may assert the defense of governmental immunity, or any other defense available to the county, in suits or other actions brought against the county.

(h) *County attorney.*

(1) The county attorney must make the final determination of eligibility of a member of the board for indemnification with respect to a matter, and of the reasonableness of all fees, expenses, and settlements.

(2) Unless the county attorney approves the settlement, a trustee must not use:

a. County funds;

b. Funds provided by a self-insurance program of the county; or

c. Funds provided under a policy the county has with an insurance company; to settle a claim against the trustee. (1987 L.M.C., ch. 29, ' 11.)

Sec. 33-61B. Accounts and records of the board of investment trustees.

(a) *Maintenance of records and accounts.* The board must keep accurate and detailed accounts of all investments, receipts, disbursements, and other transactions, including any specific records that are required by law and any additional records it considers necessary. All accounts, books and records are subject to state law on public records.

(b) *Annual accounting by board.* The fiscal year of the retirement system is the same as the fiscal year of the county. On or before January 1 of each year, the board must file with the chief administrative officer a written account, listing all investments, receipts, disbursements, and other transactions during the preceding fiscal year or during the period from the close of the last preceding fiscal year to any interim date that the board selects. This account must describe all securities and investments bought and sold, with the cost or net proceeds of each purchase or sale, and must list all cash, securities, and other property held at the end of that period. The account must include a list of the retirement system assets and the current fair market value of each asset at the end of that period. If a current fair market value is not available for a particular investment or is not applicable to a particular investment, the board must assign a value to that investment. The board must apply the investment valuation method on a consistent basis. If the board changes the investment valuation method, the board must notify the council of the change.

(c) *Reporting and disclosure.* The board must prepare for the chief administrative officer any documents required by law. (1987 L.M.C., ch. 29, ' 11.)

Sec. 33-61C. Standard of care.

A fiduciary must discharge the fiduciary's duties regarding the retirement systems:

(a) only in the best interest of the participants and their beneficiaries;

(b) only to provide benefits to the participants and their beneficiaries, and defray reasonable expenses of administering the retirement systems;

(c) with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a similar capacity and familiar with the same matters would use to conduct a similar enterprise with similar purposes;

(d) by diversifying the investments of the retirement systems to minimize the risk of large losses, unless it is clearly not prudent to diversify under the circumstances;

(e) according to a good faith interpretation of the law governing the retirement systems;

(f) according to a good faith interpretation of the documents and instruments governing the retirement systems, if they comply with this Article. (1987 L.M.C., ch. 29, ' 11; 1998 L.M.C., ch. 27, ' 1.)

Sec. 33-61D. Ethics; conflict of interest.

(a) Members of the board are subject to the provisions of chapter 19A, AEthics,@ of the Montgomery County Code.

(b) Except as otherwise provided in this section, members and employees of the board must not:

(1) Be a party to any transaction engaged in by the board or an investment manager involving the assets of the retirement system;

(2) Use the gains or profits of the system for any purpose except to make investments or payments that are authorized by the board;

(3) Deal with the assets of the retirement system for their own interest or account;

(4) Act in any transaction involving the retirement system on behalf of a party whose interests are adverse to the interests of the retirement system or the interests of the members or beneficiaries of the retirement system; or

(5) Become an endorser or surety, or in any manner an obligor, for moneys loaned to or borrowed from the board.

(c) In this section, nothing prohibits a member or employee of the board from:

(1) Being a member of the retirement system;

(2) Receiving a benefit the member or employee of the board is entitled to as a member or beneficiary in the retirement system so long as the benefit is computed and paid on a basis that is consistent with the terms of the retirement system as applied to all other members or beneficiaries; or

(3) Serving as a trustee or employee of the board in addition to being an officer, employee, agent, or other representative of a party in interest. (1987 L.M.C., ch. 29, ' 11.)